

United States Government

## NATIONAL LABOR RELATIONS BOARD 1099 14<sup>th</sup> STREET NW WASHINGTON DC 20570

May 10, 2013

800 River Road Operating Company LLC d/b/a Woodcrest Health

<u>Center</u>

Re:

Case 22-RC-073078

## **ORDER**

We deny the Employer's Motion to Vacate Decision and Certification of Representative. The Employer contends that the Board lacked a quorum at the time it issued the Decision and Certification of Representative in this case. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. *See Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act. See *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. at 1 fn.1 (2013).

Having denied the Employer's Motion to Vacate Decision and Certification of Representative, we find it unnecessary to rule on its Motion to Vacate Region's February 20, 2013 Letter Purporting to Deny Employer's Motion to Vacate Decision and Certification of Representative, which is rendered moot by the denial of the former motion.

By direction of the Board:

Farah Z. Qureshi Associate Executive Secretary